

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTIAN LIFE CENTER, INC.,
Plaintiff,
v.
FORD MOTOR COMPANY, ET AL.,
Defendants.

No. 2:22-cv-00812-JAM-JDP

**ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND**

This matter is before the Court on Christian Life, Inc.'s ("Plaintiff") motion to remand under 28 U.S.C. § 1447(c). Plaintiff brought this action in San Joaquin Superior Court on June 15, 2020 for injuries suffered from Ford Motor Company and Big Valley Ford, Inc.'s alleged violations of the Song-Beverly Consumer Warranty Act. Mot. to Remand ("Mot") at 2, ECF No. 13. Defendant Roush removed this case from San Joaquin Superior Court on May 13, 2022 under 28 U.S.C. §§ 1441 and 1332. See Notice of Removal, ECF No. 1. On June 13, 2022, Plaintiff filed a motion to remand. See Mot. Defendants oppose the motion. See Opp'n, ECF No. 14. On July 7, 2022, Plaintiff filed a reply to Defendants' opposition. See Reply, ECF No. 15.

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1 For the reasons set forth below, this Court GRANTS Plaintiff's
2 motion to remand.¹

3 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

4 On March 13, 2019, Plaintiff purchased a new 2019 Ford F-150,
5 which carried express warranties from Defendants to preserve or
6 maintain the utility or performance of the car or provide
7 compensation if there was a failure in its utility or
8 performance. Exhibit E to Notice of Removal, FAC ¶ 10, ECF
9 No. 1. Plaintiff alleges that the car was delivered to Plaintiff
10 with serious defects and nonconformities to warranty and later
11 developed other serious defects and nonconformities to warranty.
12 Id. ¶ 11. Plaintiff alleges that Defendants breached the car's
13 express and implied warranties under the Song-Beverly Consumer
14 Warranty Act by (1) failing to manufacture or repair the vehicle
15 to conform with its warranties and (2) refusing to replace the
16 car or make restitution to Plaintiff. Id. ¶¶ 12-55.

17 Plaintiff originally brought its action in San Joaquin
18 Superior Court on June 15, 2020 against Defendants Ford Motor
19 Company and Big Valley Ford, Inc. Mot. at 2. On January 27,
20 2022, Plaintiff dismissed Big Valley Ford, Inc from the case.
21 Id. Two weeks later, Plaintiff filed the FAC, adding Defendants
22 Roush and Roush Performance, Inc. as defendants alongside
23 Defendant Ford Motor Company. Id. Plaintiff served Defendant
24 Roush with the FAC on April 15, 2022. Id. Roush removed this
25 case from San Joaquin Superior Court on May 13, 2022, alleging
26

27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled
for August 23, 2022.

1 diversity jurisdiction under 28 U.S.C. §§ 1441 and 1332. See
2 Notice of Removal. On May 23, 2022, Plaintiff submitted a
3 request to this Court for an entry of default against Defendant
4 Roush Performance, Inc. See Request for Entry of Default, ECF.
5 No. 6. The Court declined Plaintiff's motion. See Request for
6 Entry of Default Declined, ECF No. 10. On June 13, 2022,
7 Plaintiff filed this motion to remand, arguing remand is proper
8 because (1) Defendant Roush's notice of removal was untimely,
9 (2) Defendant Roush Performance, Inc. did not consent to the
10 removal, and (3) the amount-in-controversy requirement for
11 diversity jurisdiction was not met. Mot. at 3-9. Defendants
12 oppose the motion and claim that Plaintiff waived its right to
13 remand. Opp'n at 4-15.

14 II. OPINION

15 A. Legal Standard

16 In assessing a motion to remand, the Court must strictly
17 construe the removal statute against removal jurisdiction. Gaus
18 v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). Federal
19 jurisdiction must be rejected in favor of remand "if there is any
20 doubt as to the right of removal in the first instance." Id.
21 (citing Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064
22 (9th Cir. 1979)). Remand is proper if a defendant's notice of
23 removal is untimely. Durham v. Lockheed Martin Corp., 445 F.3d
24 1247, 1253 (9th Cir. 2006). Although time limits for removal are
25 not jurisdictional, they are mandatory and will require removal
26 if exceeded. Fristoe v. Reynolds Metals Co., 615 F.2d 1209, 1212
27 (9th Cir. 1980).

28 Generally, a defendant may remove a state court action if

1 the initial pleading could have been filed in federal court. 28
2 U.S.C. § 1441(a). The notice of removal must be filed within
3 thirty days after a defendant receives a copy of the initial
4 pleading. 28 U.S.C. § 1446(b)(1). But when a case is not
5 initially removable, a defendant can move for removal within
6 thirty days after receiving an "amended pleading, motion, order,
7 or other paper from which it may first be ascertained that the
8 case is one which is or has become removable." 28 U.S.C.
9 § 1446(b)(3); Caterpillar v. Lewis, 519 U.S. 61, 69 (1996).
10 However, in these cases, if removal is based on diversity
11 jurisdiction under § 1332, a case may not be removed more than
12 one year after the initiation of the state action, unless the
13 federal court finds that a plaintiff acted in bad faith to
14 prevent a defendant from removing the action before the one-year
15 limit. 28 U.S.C. § 1446(c)(1); See Ritchey v. Upjohn Drug Co.,
16 139 F.3d 1313, 1316 (9th Cir. 1998).

17 B. Analysis

18 1. Timeliness of Removal Petition

19 Plaintiff argues that Defendants' notice of removal was
20 untimely because it was filed nearly two years after the filing
21 of the initial state action; the state action was filed on
22 June 15, 2020 and the notice of removal was filed on May 13,
23 2022. Mot. at 3. Plaintiff argues that this nearly two-year gap
24 in filing the notice of removal violates the one-year limit
25 imposed by § 1446(c)(1). Id.

26 Defendants argue that removal was timely because Defendant
27 Roush, as a defendant that was later added to this case in the
28 FAC, was entitled to remove the case within thirty days after its

1 receipt of the FAC under § 1446(b). Opp'n at 4-5. Defendants
2 argue that the one-year limit imposed by § 1446(c)(1) does not
3 apply here and that Ninth Circuit case law supports Defendants'
4 claim that each defendant in an action is entitled to a thirty-
5 day window to file a notice of removal, regardless of when they
6 are brought into the action. Id. at 4 (citing Destfino v.
7 Reiswig, 630 F.3d 952, 956 (9th Cir. 2011)). Defendants argue
8 that denying removal because of the one-year limit would
9 incentivize plaintiffs to block removal based on diversity by
10 waiting to add diverse parties until a year after the initial
11 state action had been filed. Id. at 5.

12 The Court finds that Defendants' removal was untimely.
13 When removal is based on diversity jurisdiction under § 1332, a
14 case may not be removed more than one year after the initiation
15 of the state action, unless the federal court finds that a
16 plaintiff acted in bad faith to prevent a defendant from
17 removing the action before the one-year limit. 28 U.S.C.
18 § 1446(c)(1); See Ritchey v. Upjohn Drug Co., 139 F.3d 1313,
19 1316 (9th Cir. 1998). While Defendants argue that a remand
20 order in this case would incentivize plaintiffs to delay adding
21 diverse defendants to prevent removal, § 1446(c)(1) addresses
22 this concern through its bad faith provision. However,
23 Defendants have put forth no evidence to support a finding that
24 Plaintiff acted in bad faith to prevent Defendants from removing
25 the action before the one-year limit. In the absence of any
26 evidence that would support a finding of bad faith by Plaintiff
27 under § 1446(c)(1), the Court finds that Defendants' removal was
28 untimely.

2. Plaintiff's Waiver of Remand Motion

Defendants argue that Plaintiff's request for an entry of default against Defendant Roush Performance Inc. constitutes affirmative conduct suggesting that Plaintiff waived its right to remand. Opp'n at 14-15. The Court disagrees.

In assessing whether the right to remand has been waived, the federal court has "broad discretion in deciding whether a plaintiff has waived a right to object to procedural irregularities in removal proceedings." SWC Inc. v. Elite Promo Inc., 234 F. Supp. 3d 1018, 1023 (N.D. Cal. 2017) (citing Alarcon v. Shim Inc., No. C 07-02894 SI, 2007 WL 2701930, at *2 (N.D. Cal. Sept. 13, 2007)). Waiver can be found when plaintiffs engage in "affirmative conduct that would offend principles of fairness" if remand were granted. Id. at 1025. While the Ninth Circuit has not directly addressed whether a request for default judgement constitutes this type of affirmative conduct, it has found waiver where plaintiffs have made repeated appearances before the court before raising a timeliness objection. Meadows v. Bicrodyne Corp., 785 F.2d 670, 672 (9th Cir. 1986).

Here, Defendants filed their notice of removal on May 13, 2022 and Plaintiff filed its motion to remand on June 13, 2022. See Notice of Removal; Mot. In the time between these motions, Plaintiff's sole interaction with the Court was its request for entry of default against Defendant Roush Performance Inc. on May 23, 2022. See Request for Entry of Default. This single request by Plaintiff is not sufficient to establish the repeated appearances required to constitute a waiver of Plaintiff's right

1 to remand on timeliness grounds. Accordingly, in the absence of
2 evidence necessary to support Defendants' argument, i.e.,
3 evidence of repeated appearances by Plaintiff before this Court
4 before filing the instant motion, the Court finds that Plaintiff
5 did not waive its right to remand.

6 3. Remaining Issues

7 The Court does not reach the parties' remaining issues,
8 because the first issue of timeliness is dispositive.

9 III. SANCTIONS

10 This Court issued its Order re Filing Requirements ("Filing
11 Order") on May 13, 2022. ECF No. 5-2. The Filing Order limits
12 reply memoranda to five pages. Filing Order at 1. The Filing
13 Order also states that an attorney who exceeds the page limit
14 must pay monetary sanctions of \$50 per page. Id. Plaintiff
15 exceeded the Court's five-page limit on reply memoranda by three
16 pages. See Reply. The Court therefore ORDERS Plaintiff's
17 counsel to pay \$150.00 to the Clerk for the Eastern District of
18 California no later than five days from the date of this Order.

19 IV. ORDER

20 For the reasons set forth above, the Court
21 GRANTS Plaintiff's motion to remand.

22 IT IS SO ORDERED.

23 Dated: September 27, 2022

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25 
26 JOHN A. MENDEZ
27 SENIOR UNITED STATES DISTRICT JUDGE
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